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14 *Attorneys for Plaintiffs*

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 **IN RE APPLE & AT&TM**
19 **ANTITRUST LITIGATION.**

20 **Case No: C 07-05152-JW**

21 **PLAINTIFFS' UNOPPOSED**
22 **MOTION TO VACATE THE DATE**
23 **FOR FILING A CONSOLIDATED**
24 **AMENDED COMPLAINT**

25 Pursuant to Civil Local Rule 7-11, all Plaintiffs, by their counsel, hereby move the
26 Court to vacate the date for the service of a Consolidated Amended Complaint presently
27 set for today, January 18, 2008.

28 **I. Until the Court Resolves Issues Concerning the**
Proper Lead Counsel in this Case, a Consolidated
Amended Complaint Cannot Be Filed

By Order dated November 30, 2007 (the "November 30th Order"), this Court consolidated the actions *Paul Holman and Lucy Rivello, et al. v. Apple, Inc., AT&T Mobility LLC, et al.* (No. 07-CV-05152-JW) and *Timothy Smith, et al. v. Apple, Inc. et al.* (No. 07-CV-05662-RMW), and directed the case to proceed as *In Re Apple & AT&TM Antitrust Litigation* (No. 07-05152-JW). The November 30th Order appointed the counsel in *Smith* and *Holman* as Co-Lead Counsel and directed the filing of a Consolidated Amended Complaint.

Recently, certain counsel in *Smith* have withdrawn and the remaining counsel have determined that they should not appear as co-lead counsel with counsel in *Holman*, and intend to file a motion to disqualify counsel in *Holman* from serving as co-lead counsel in this case. Counsel in *Holman* will oppose that motion.

Because of these developments, counsel have not been able to organize a leadership structure and agree upon the terms of a Consolidated Amended Complaint,

Accordingly, counsel for all Plaintiffs request that the date for the filing of a Consolidated Amended Complaint be vacated and shall be reset at the Initial Case Management Conference on January 28, 2008. Counsel for Defendants do not oppose this motion.

II. Conclusion

Plaintiffs respectfully request that this Court grant their unopposed Motion.

Dated: New York, New York
January 18, 2008

AGREED TO:

FOLKENFLIK & McGERITY

By: /s/ Max Folkenflik
Max Folkenflik Esq.
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LAW OFFICE OF DAMIAN R. FERNANDEZ

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